



February 11, 2008

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex B)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**Re: Green Guides Regulatory Review, 16 CFR part 260, Comment, Project No. P954501**

Dear Sir or Madam:

EPI is a consulting firm that specializes in packaging and product stewardship. We provide services related to regulatory tracking, compliance, and design for the environment (DfE). As a result, we are familiar with many environmental marketing claims, claims of recyclability, etc., used on products and packaging in the marketplace, as well as with the environmental issues underpinning those claims. We are often engaged by companies to provide advice on labeling that is compliant with the Guides, to help them gather documentation to substantiate their claims, or to review claims made by their suppliers. In doing so, we are confronted with terms and issues that were not foreseen by the 1998 Guides.

A key development in today's environmental marketing is the use of newer language to make sweeping claims about the advantages of a product. Businesses that follow the spirit of the Guides in avoiding such broad claims are at a competitive disadvantage to the companies making those claims. We welcome the early review of the Guides in light of current trends.

The following are our comments on the review of the FTC Guides for the Use of Environmental Marketing Claims. Comment numbers refer to the question numbering in the document at <http://www.ftc.gov/os/2007/11/P954501ggfrn.pdf>.

**A. General Issues**

**(1) Continuing Need for the Guides**

There is a strong need for the Guides, and for an update to the 1998 version of the Guides. There has been a surge in environmental marketing claims in recent years, many of them using terms not addressed by the 1998 Guides. This has the potential to create significant consumer confusion. Furthermore, many claims are unsubstantiated or are so broadly worded that they are impossible to substantiate, thereby undermining the value of legitimate environmental claims.



## **(8) Consumer Interest in Environmental Issues**

The growth in consumer interest in the environment and the role of environment in consumer purchasing decisions has been well-documented in studies including, but not limited to, those conducted by the following organizations:

- Natural Marketing Institute (NMI)
- Landor Associates
- Datamonitor
- Organic Consumers Association
- Global Market Insite (GMI)

In addition, many industries cite their own sales statistics to indicate the growth in environmentally-motivated purchases in particular products and industry segments, e.g. organic foods, hybrid vehicles, and “green” buildings.

These trends have been accompanied by a proliferation of claims and labels relating to environmental attributes of products as well as other issues that fall within the range of “sustainability” – such as fair trade or other social factors.

However, the aforementioned studies often indicate confusion or poor environmental literacy on the part of consumers. Frequently, consumers recognize terms as being relevant to the environment but are not sure what they mean, or they fail to distinguish between several related concepts.

As a result, guidelines for the use of environmental claims in marketing are particularly relevant today. However, the current version of the Guides does not specifically address many of the terms frequently used in the marketplace, and should be expanded to include detailed guidance on these terms and concepts.

## **(9) Benefits of Guides to Businesses**

The Guides have been essential to businesses wishing to make statements regarding certain environmental aspects of their products or packaging. The specific examples of unacceptable language and the safe harbor statements showing samples of acceptable claims are particularly useful. Companies rely on them to formulate claims with confidence that the claims will comply with the requirements of the Guides. Phrases used in the examples in the Guides have been widely adopted and can be found on numerous consumer products in today’s marketplace. The fundamental concepts outlined in the Guides should not be changed. However, certain areas of the Guides should be expanded to close gaps and address new issues.

## **(10) Modifications to Current Guidance**

The Guides state in one of their examples that an item, e.g. a packaging container, should not be marketed as “recyclable” without further qualification unless facilities that collect the item for recycling are “available to a substantial majority of consumers or communities.” Complying with this guidance is difficult for companies for several reasons:



- 1) The Guides do not state a particular threshold (e.g. percentage of consumers or communities that must have access to recycling for a particular material or item in order to label it as “recyclable” without further qualification). While there have been estimates of what constitutes “substantial majority,” these are not evident to businesses consulting the published Guides, and should be made explicit in the document.
- 2) The Guides do not contain a “safe harbor” list of materials which the FTC considers the availability of recycling systems to be widely available enough to be labeled as “recyclable” without further qualification.
- 3) The Guides do not refer businesses to an approved source of data which may be used to determine the availability of recycling systems for a particular material. Because recycling systems exist at the local level and these systems frequently make changes to the range of materials or container types that they accept, it is not feasible for many companies, particularly small businesses, to conduct the necessary studies to determine the % of consumers or communities with access to recycling programs for a specific material.

We recommend, at minimum, adding a “safe harbor” list of materials to the Guides which the FTC considers to be recyclable in a substantial majority of US communities or by a substantial majority of consumers, and updating this list on a regular basis. This would provide clarity for all businesses wishing to label products or packages as “recyclable” without further qualification. The list should be based on publicly available data regarding recycling systems and the materials that they accept.

A preferable step would be to conduct this survey on a regular basis and publish the results so that all businesses would have access to the same information to support their recyclability claims. Such an effort could be undertaken by or in cooperation with other stakeholders (e.g. recycling industry bodies, US Environmental Protection Agency). If FTC were to conduct or commission a study, there would be increased costs to FTC but decreased costs to businesses. Providing this information to all companies would help to level the playing field for smaller businesses that lack such resources to conduct costly studies by removing much of the legal uncertainty related to recyclability labeling.

Either of these solutions would facilitate the labeling of commonly recyclable items with clear, concise recycling instructions. It would also benefit consumers by increasing the accuracy and transparency of recyclability claims and by discouraging businesses from making unsubstantiated claims.

### **(15) Claims Not Covered by the Guides**

EPI has observed a sharp increase in the use of environmental marketing language for consumer products currently on the US market. The following terms are some of the most widely-used:

- Sustainable
- Green
- Planet-friendly
- Petroleum-free (e.g. formulation of cleaning supplies)
- Renewable (used to describe energy sources)



- Renewable (used to describe materials)
- Carbon-neutral
- Words and prefixes such as eco-, bio-, earth, nature, and terra
- 100% recyclable (or other percentage-based recyclability claims made in this format)

These terms are often used in advertisement or labeling of specific products to describe the finished product, its ingredients or manufacture, or its packaging. In addition, these terms, as well as trademarked words or phrases connoting environmental attributes, are used in marketing materials to convey general environmental benefits associated with a company's activities, instead of making claims about a specific product.

We feel that the Guides should be modified to address the use of these terms. Many of them are analogous to terms already included in the Guides, and could simply be added to the lists of examples. Others, such as renewable, sustainable, and carbon-neutral, introduce concepts not explained in the current version of the Guides, and warrant the addition of new sections, complete with guidance, specific criteria, and examples.

### **(17) Overlap or conflict with other federal, state, or local laws or regulations**

The state of California has more specific requirements than the Guides regarding the use of environmental marketing claims related to plastic packaging. Sections 42355-42357 and Sections 42359-42359.6 of the California Public Resources Code require plastic bags and food and beverage containers labeled as "compostable," "biodegradable," "degradable," or marketed using similar terms, to comply with the applicable ASTM standard for the term used.

### **(18) Harmonization with International Laws, Regulations, or Standards**

Consistent with the preference under the current Guides for specific, verifiable claims rather than general ones, it is our opinion that the Guides should be harmonized with existing standards wherever possible. For example, claims of compostability or biodegradation in a certain environment could be substantiated via compliance with the applicable ASTM or ISO standard. Alternatively, for attributes for which national or international standards exist, compliance with these standards could be established as a prerequisite for claiming that attribute (similar to the approach used by California as noted above).

EPI also wishes to note that many jurisdictions outside of the US require producers to label packaging or products with symbols to fulfill legal obligations. These include the crossed-out wheeled trash bin, anti-litter symbols, the Green Dot, the three-chasing-arrows or Möbius loop, and other symbols related to the proper disposal of an item or to the participation of the manufacturer in an organized recovery system. Many businesses distribute their products or packaging globally and cannot prevent items labeled with these symbols from entering the US market. Guidance on the acceptable use of these symbols would be helpful in creating clarity for businesses.



## **B. Specific Issues**

### **(2) Guidance regarding “sustainable” claims**

While the concept of sustainable development has been well established, there is no generally agreed definition of the term “sustainable” as it relates to a product, package, or service. The concept of sustainability, however, encompasses a wide range of economic, environmental, and social considerations throughout the lifecycle of the product. To claim that a product is “sustainable” is much more ambitious than to claim merely that it is “environmentally preferable” – it is tantamount to claiming that its production, use, and disposal could be continued indefinitely, i.e. that it produces no negative impacts. Due to the complexity of the concept of sustainability and the complexity of today’s supply chains, it is nearly impossible to substantiate an unqualified claim that a product is sustainable. Broad claims using this term are likely to mislead the consumer by implying that there are no negative impacts associated with the production, distribution, use, or disposal of the product. Another consideration is that many consumers do not understand what is meant by the term “sustainable.” As a result, EPI finds that marketing claims using this term should be discouraged, consistent with existing guidance on broad, unqualified claims of general benefit.

Claims using the term “sustainable” should be transparent to the consumer and should be specific enough that the consumer can determine the extent of the claim. For example, use of the term or a logo to indicate conformance with specific, published, verifiable sourcing criteria (e.g. labeling and certification systems established by reputable organizations for sustainable forestry management, sustainable fisheries management, etc.) is less likely to mislead consumers. While there may be competing systems, the claims are specific to a certain aspect of the product, and consumers can obtain information about the sustainability criteria from that organization.

### **(6) Time frame for Product Decomposition**

Rather than specifying a timeframe to be applied to all products and packaging, the Guides should be revised to require the producer to make an explicit claim indicating the conditions and time period, or, for unqualified claims, conform to a generally accepted standard (e.g. ASTM or ISO) related to the specific claim (see comments on questions 17 and 18 above).

Claims of biodegradability in landfills should not be permitted, as they mislead the consumer by implying that this is an environmentally desirable outcome. (The biodegradation of materials in landfills, when it does occur, produces methane, a powerful greenhouse gas.) This is analogous to the Guide section stating that an unqualified “compostable” claim “misleads consumers about the environmental benefit provided when the product is disposed of in a landfill.”

Thank you for the opportunity to comment on the Green Guides. We look forward to the stakeholder dialogue that the review process affords, and would be happy to respond to any questions you may have.

Sincerely,

Catherine Goodall  
Project Director